

Department of Veterans Affairs

§ 20.716

recordings of hearings that have not been transcribed will be maintained by the Board as the official record of hearings and retained in accordance with retention standards approved by the National Archives and Records Administration. A transcript will be prepared and incorporated as a part of the claims folder, loan guaranty folder, or other applicable Department of Veterans Affairs records folder if one or more of the following conditions have been met:

(1) The appellant or representative has shown good cause why such a written transcript should be prepared. (The presiding Member will determine whether good cause has been shown. Requests that recordings of hearing proceedings be transcribed may be made orally at the time of the hearing. Requests made subsequent to the hearing must be in writing and must explain why transcription is necessary. They must be filed with: Director, Administrative Service (014), Board of Veterans' Appeals, 810 Vermont Avenue, NW., Washington, DC 20420.)

(2) Testimony and/or argument has been presented at the hearing pertaining to an issue which is to be remanded to the agency of original jurisdiction for further development or an issue which is not in appellate status which is to be referred to the agency of original jurisdiction for consideration.

(3) The hearing involves an issue relating to National Service Life Insurance or United States Government Life Insurance.

(4) With respect to hearings conducted by a Member or Members of the Board at a Department of Veterans Affairs field facility :

(i) An issue on appeal involves radiation, Agent Orange, or asbestos exposure;

(ii) The appeal involves reconsideration of a prior Board of Veterans' Appeals decision on the same issue; or

(5) The Board's decision on an issue addressed at the hearing has been appealed to the United States Court of Veterans Appeals.

(b) *Copy of hearing tape recording or written transcript.* One copy of the tape recording of hearing proceedings before the Board of Veterans' Appeals, or the written transcript of such proceedings

when such a transcript has been prepared in accordance with the provisions of paragraph (a) of this section, shall be furnished without cost to the appellant or representative if a request is made in accordance with §1.577 of this chapter.

(Authority: 38 U.S.C. 7102, 7105(a), 7107)

[57 FR 4109, Feb. 3, 1992, as amended at 58 FR 27936, May 12, 1993; 61 FR 20452, May 7, 1996]

§ 20.715 Rule 715. Recording of hearing by appellant or representative.

An appellant or representative may record the hearing with his or her own equipment. Filming, videotaping or televising the hearing may only be authorized when prior written consent is obtained from all appellants and contesting claimants, if any, and made a matter of record. In no event will such additional equipment be used if it interferes with the conduct of the hearing or the official recording apparatus. In all such situations, advance arrangements must be made. In the case of hearings held before the Board of Veterans' Appeals in Washington, DC, arrangements must be made with the Director of the Administrative Service (014), Board of Veterans' Appeals, 810 Vermont Avenue, NW., Washington, DC 20420. In the case of hearings held before the Board at Department of Veterans Affairs field facilities, arrangements must be made through the office of the Department of Veterans Affairs official who signed the letter giving notification of the time and place of the hearing.

(Authority: 38 U.S.C. 7102, 7105(a), 7107)

[58 FR 27936, May 12, 1993, as amended at 61 FR 20452, May 7, 1996]

§ 20.716 Rule 716. Correction of hearing transcripts.

The tape recording on file at the Board of Veterans' Appeals or a transcript prepared by the Board of Veterans' Appeals is the only official record of a hearing before the Board. Alternate transcript versions prepared by the appellant and representative will not be accepted. If an appellant wishes to seek correction of perceived errors in a hearing transcript, the appellant or his or her representative should move for the correction of the hearing

transcript within 30 days after the date that the transcript is mailed to the appellant. The motion must be in writing and must specify the error, or errors, in the transcript and the correct wording to be substituted. In the case of hearings held before the Board of Veterans' Appeals, whether in Washington, DC, or in the field, the motion must be filed with the Director, Administrative Service (014), Board of Veterans' Appeals, 810 Vermont Avenue, NW., Washington, DC 20420. The ruling on the motion will be made by the presiding Member of the hearing.

(Authority: 38 U.S.C. 7102, 7105(a), 7107)

[58 FR 27936, May 12, 1993, as amended at 61 FR 20452, May 7, 1996]

§20.717 Rule 717. Loss of hearing tapes or transcripts—motion for new hearing.

(a) *Motion for new hearing.* In the event that a hearing has not been recorded in whole or in part due to equipment failure or other cause, or the official transcript of the hearing is lost or destroyed and the recording upon which it was based is no longer available, an appellant or his or her representative may move for a new hearing. The motion must be in writing and must specify why prejudice would result from the failure to provide a new hearing.

(b) *Time limit for filing motion for a new hearing.* The motion will not be granted if there has been no request for a new hearing within a period of 120 days from the date of a final Board of Veterans' Appeals decision or, in cases appealed to the United States Court of Veterans Appeals, if there has been no request for a new hearing within a reasonable period of time after the appeal to that Court has been filed.

(c) *Where motion for a new hearing is filed.* In the case of hearings held before the Board of Veterans' Appeals, whether in Washington, DC, or in the field, the motion must be filed with: Director, Administrative Service (014), Board of Veterans' Appeals, 810 Vermont Avenue, NW., Washington, DC 20420.

(d) *Ruling on motion for a new hearing.* The ruling on the motion for a new hearing will be made by the Member who presided over the hearing. If the

presiding Member is no longer available, the ruling on the motion may be made by the Member or Members to whom the case has been assigned for a determination. In cases in which a final Board of Veterans' Appeals decision has already been promulgated with respect to the appeal in question, the Chairman will assign the matter in accordance with §19.3 of this title. Factors to be considered in ruling on the motion include, but will not be limited to, the extent of the loss of the record in those cases where only a portion of a hearing tape is unintelligible or only a portion of a transcript has been lost or destroyed, and the extent and reasonableness of any delay in moving for a new hearing. If a new hearing is granted in a case in which a final Board of Veterans' Appeals decision has already been promulgated, a supplemental decision will be issued.

(Authority: 38 U.S.C. 7102, 7105(a), 7107)

[57 FR 4109, Feb. 3, 1992, as amended at 58 FR 27936, May 12, 1993; 61 FR 20452, May 7, 1996]

§§ 20.718—20.799 [Reserved]

Subpart I—Evidence

§20.800 Rule 800. Submission of additional evidence after initiation of appeal.

Subject to the limitations set forth in Rule 1304 (§20.1304 of this part), an appellant may submit additional evidence, or information as to the availability of additional evidence, after initiating an appeal.

(Authority: 38 U.S.C. 7105(d)(1))

§§ 20.801—20.899 [Reserved]

Subpart J—Action by the Board

§20.900 Rule 900. Order of consideration of appeals.

(a) *Docketing of appeals.* Applications for review on appeal are docketed in the order in which they are received. Cases returned to the Board following action pursuant to a remand assume their original places on the docket.

(b) *Appeals considered in docket order.* Appeals are considered in the order in which they are entered on the docket,